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8 **STATE OF WASHINGTON  
YAKIMA COUNTY SUPERIOR COURT**

9 IN THE MATTER OF THE  
10 DETERMINATION OF THE RIGHTS  
11 TO THE USE OF THE SURFACE  
12 WATERS OF THE YAKIMA RIVER  
13 DRAINAGE BASIN, IN  
14 ACCORDANCE WITH THE  
15 PROVISIONS OF CHAPTER 90.03,  
16 REVISED CODE OF WASHINGTON,

NO 77-2-01484-5

[DRAFT] [PROPOSED] FINAL  
DECREE

17 STATE OF WASHINGTON,  
18 DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

19 JAMES J. ACQUAVELLA, et al.,

Defendant.

20 This case is a general adjudication of rights to surface water in the Yakima River Basin,  
21 located in Yakima, Kittitas, Klickitat and Benton Counties, Washington. The State of  
22 Washington, Department of Ecology began this case by filing a Petition for a determination of  
23 the surface water rights pursuant to chapter 90.03 RCW. Pursuant to RCW 90.03.160, the  
24 Court appointed a Referee to hold hearings, take testimony, and file a report containing  
25 recommendations with regard to claims for certain surface water rights, and the Court retained  
26 other claims for surface water rights and conducted hearings. Because the case is so large,

1 with so many parties, by Pretrial Order No. 8, entered March 3, 1989 the Court divided claims  
2 into the four pathways of federal reserved rights for Indian claims, federal reserved rights for  
3 non-Indian claims, state-based rights of major claimants, and state-based rights for other  
4 claimants, by subbasin. Conditional Final Orders have now been entered for each pathway and  
5 for each subdivision within each pathway. The time for appeals of these Conditional Final  
6 Orders has now expired, and all timely filed appeals of the Conditional Final Orders have been  
7 completed. The Court has now considered the contentions of counsel, and has reviewed the  
8 files, evidence and records herein. NOW THEREFORE the Court

9 ORDERS, ADJUDGES AND DECREES as follows:

10 1. This is a quiet title action to all surface water rights in the Yakima River Basin, and  
11 no valid surface water rights exist in the Yakima River Basin except:

12 (a) as set forth in the Final Decree, either in the schedule of rights or in paragraph 4 herein, and

13 (b) for surface water permits or other use authorizations, the final resolution of which is under the  
14 administrative jurisdiction of the Department of Ecology ("Ecology") as of the date of this Final  
15 Decree. These include, but are not limited to: City of Yakima surface water permit # S4-  
16 01141P(B); City of Yakima change authorization for groundwater certificate # 938-D;  
17 Yakima-Tieton Irrigation District reservoir permit # R4-26540; and ----- Accordingly,  
18 nothing in the foregoing shall prevent or prohibit the beneficial use of water under, or the  
19 administrative recognition of, these identified surface water permits or other use authorizations  
20 that were under the administrative jurisdiction of Ecology as of the date of this Final Decree.

21 2. The Conditional Final Orders ("CFOs") previously entered in this action  
22 confirmed the valid surface water rights in this case, and the rights confirmed in those CFOs  
23 are integrated in this Final Decree. Each water right entered in a CFO was confirmed as of the  
24 date of entry of the CFO, so that any future determination of the extent and validity of the  
25 water right (including any determination of relinquishment) shall commence from the date of  
26 entry of the CFO. The only exceptions to that are (a) if a complete five-year period of non-use

1 began before the entry of the CFO but did not conclude until after entry, the statutory period  
2 for relinquishment begins before the date of entry of the CFO when the non-use begins; and (2)  
3 any water right which was changed pursuant to RCW 90.03.380 after the date of the entry of  
4 the CFO in which it was determined is affirmed as of the date of the last such change. Each  
5 water right so confirmed is set forth in the Schedule of Rights herein in an integrated order of  
6 priority.

7 The CFOs entered, and their dates of entry, are listed below. Amendments to the CFOs  
8 are also listed, but amendments do not change the original date of entry of a CFO. The rights  
9 in a CFO are determined as of the original date of entry, even if the CFO has been amended  
10 since that time.

11 3. Each water right confirmed shall have a date of priority as shown in the Schedule  
12 of Rights or in paragraph 4 herein. No user of a water right may exercise it so as to impair a water  
13 right with a senior priority date. A senior water right with an upstream point of diversion can not  
14 be impaired by a junior water right with a downstream point of diversion, because regulating the  
15 downstream junior water right could not provide more water to the upstream senior water right. In  
16 addition, as between water rights diverting from different streams above the confluence of those  
17 streams, no junior water right on one stream shall be regulated because a senior water right on  
18 another stream above the confluence of the streams is not receiving all the water to which the  
19 senior water right is entitled.

20 4. In addition to the water rights listed in the schedule of rights, an historic water right  
21 to non-diversionary stockwater in watercourses that flow across or are adjacent to riparian lands,  
22 and in ponds or springs that are located on or adjacent to the lands, if the lands were used as pasture  
23 or range for livestock at the time of this adjudication, in amounts, priority, and with conditions as  
24 set forth in Order Re: Non-Diversionary Stockwater Rights, entered July 10, 1997 was confirmed  
25 in this adjudication. A non-diversionary right to water for wildlife was included in each CFO.  
26

1           5.       This Court has also recognized in this adjudication that certain uses of water do not  
2 require a water right. These are:

3               a.       Use of foreign return flows, as set forth in Memorandum Opinion Re:  
4 Motion for Reconsideration of Limiting Agreements, April 1, 1994.

5               b.       Uses of water for fire suppression, as set forth in Stipulation Re: Water Use  
6 for Fire Suppression, December 12, 1996.

7               c.       Use of springs that surface on claimants' property and form no regular  
8 water course off of the property and not leaving the property, hydrologically connected to any other  
9 surface water, or affecting any existing water rights, when there was beneficial use of these waters  
10 prior to enactment of the 1917 Water Code, as set forth in Opinion Re: Exception of Dwayne and  
11 Alvina Dormaier (Claim No. 4706 Re Subbasin No. 21 (Burbank Creek), September 16, 1993.

12           6.       Ecology shall issue certificates of adjudicated water right pursuant to RCW  
13 90.03.240 to the claimants herein whose rights are listed in the schedule of rights, provided that  
14 each claimant first pays Ecology the required fee for each certificate pursuant to RCW 90.03.470  
15 (10) and the required fee for recording the certificate pursuant to RCW 90.03.330 (1). RCW  
16 90.03.470(13). Each holder of a water right confirmed in this action shall pay such fees to Ecology  
17 within 180 days after Ecology has requested payment of such fees from the holder.

18           7.       Each certificate of adjudicated water right shall have a certificate number, and, if  
19 applicable, a subbasin number for ease of reference. Each right shall include the date of the CFO  
20 in which the right was determined. County parcel information, required for recording with the  
21 county auditors, shall be included on the certificates. Conditions or limitations applicable to each  
22 right, such as metering, shall be referenced on each certificate.

23           8.       The rights integrated in this Final Decree shall be administered and interpreted in  
24 accordance with the orders entered in the course of this adjudication.

25           9.       The Department of Ecology has the right to administer this Decree pursuant to  
26 43 U.S.C. § 666 except that the Yakama Indian Nation has the right as specifically set forth in

orders in this action to administer water rights confirmed to the Yakama Indian Nation or its members.

10. The court shall not retain continuing jurisdiction of this action once the Final Decree is entered

11. Ecology shall within 180 days after entry of this Final Decree prepare a Notice of Availability and include it in the monthly notice, and shall mail it to each party in this action with a preprinted postcard which can be mailed back to Ecology to request a copy, informing parties that a copy of the Final Decree is available (a) on Ecology's website or (b) by mail in paper or electronic format by request to Ecology, or (c) at libraries in the cities of Yakima, Ellensburg, Cle Elum, Sunnyside, and Richland.

12. Each party to this action or the party's successors in interest shall inform Ecology within 90 days of any change in address or change in ownership of a water right confirmed in this action.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

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Sidney P. Ottem  
Court Commissioner